No. 87-1031

In the

Supreme Court of the United States

October Term, 1987

G. P. REED,

Petitioner,

v.

UNITED TRANSPORTATION UNION, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE ASSOCIATION FOR UNION DEMOCRACY AND PUBLIC CITIZEN AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

In a suit by a union member solely against his union to enforce his right of free speech, should the Court deviate from the normal federal rule, which requires it to borrow the most analogous state statute of limitations, and instead rely on the six-month period for filing charges under the National Labor Relations Act, which is borrowed for "hybrid" duty of fair representation actions by an employee against both his employer and his union?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES: Page

Page

Page

Page

LEGISLATIVE MATERIALS:

Statutes:

Legislative History:

OTHER AUTHORITIES:

Page

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INTEREST OF *AMICI CURIAE*

Amici file this brief because, although they agree with petitioner that the Court should not borrow a six-month statute of limitations, which has previously been borrowed for "hybrid actions" to enforce the duty of fair representation and collective bargaining agreements, to govern actions under the Labor-Management Reporting and Disclosure Act of 1959 ("LMRDA"), they differ with petitioner about the legal analysis required to reach that result. Most important, *amici* believe that the inappropriateness of borrowing the six-month limitations period becomes most obvious only following a careful analysis of the historical origins, purposes, and litigation practicalities of the hybrid action on the one hand, and of LMRDA actions on the other. Both *amici* are well situated to advise the Court in that regard.

The Association for Union Democracy is a non-profit corporation founded in 1969 which seeks to further democratic principles and practices in American labor organizations, both by encouraging union members to participate actively in the internal life of their unions, and by protecting the exercise of their democratic rights within their unions. No other organization devotes itself primarily to this objective.

The sponsors of the Association include former leaders of major unions, religious leaders, members of union public review boards, lawyers, prominent educators in labor studies and labor law, and, of course, numerous union members. Despite divergent backgrounds, all share the view that the labor movement is one of the great forces which help sustain democracy in our national life and that, if it is to serve this purpose, union leaders must be responsive to their members, and unions must be democratic and just in their internal operations.

In the past, the Association has provided legal and other support in numerous controversies involving unions. Its experience leads it to conclude that a six-month statute of limitations is much too short to permit many rank-and-file union members to obtain needed judicial assistance when their leaders infringe their democratic rights.

Public Citizen is a public interest organization which was founded in 1971 by Ralph Nader. Attorneys for Public Citizen frequently represent union members who have been unable to protect themselves from undemocratic practices without invoking judicial authority. Public Citizen has found that, all too frequently, union members do not come to the realization that they *have* legal rights that can be enforced in the courts, and do not find legal representation, until well after six months have passed since their rights were violated.

STATEMENT

This is a free speech case in which petitioner, an elected officer of Local 1715 of respondent United Transportation Union ("UTU"), contends that respondents deprived him of compensation for "lost time," the leave without pay that he was required to take from his employment in order to perform his union duties, because he was a "company man" who was too accommodating to the company. Jt. App. 28, ¶ 3(b). Petitioner alleges that other officers who were allied with the union leadership were allowed compensation in the same circumstances in which such compensation was denied to him. However, he did not bring his suit until more than two years had passed following the denial of his intra-union appeal.

The district court held that, notwithstanding this Court's decision in *DelCostello v. Teamsters*, 462 U.S. 151 (1983), which borrowed the six-month limitations period for hybrid actions, the LMRDA is fundamentally different from hybrid actions, both in terms of the rights provided, the practicalities of litigation, and the threat to the stability of labor-management dispute resolutions that concerned the Court in *DelCostello*. However, on interlocutory appeal, the court below refused to follow the general rule requiring that statutes of limitations be borrowed from state law, and therefore reversed. The court of appeals rejected the analysis in *Doty v. Sewell*, 784 F.2d 1 (1st Cir. 1986), the only appellate decision which carefully analyzes both the hybrid action and the LMRDA, and which concludes that the reasons that supported borrowing the six-month statute for the former do not warrant such borrowing for the latter.

SUMMARY OF ARGUMENT

As a general rule, the limitations period for a federal cause of action is to be borrowed from the most closely analogous state statute. This Court carved out what it characterized as a narrow exception to this general rule for the federal cause of action to enforce rights under collective bargaining agreements when a union has breached its duty of fair representation ("DFR"), which is implied by the National Labor Relations Act ("NLRA"). In *DelCostello v. Teamsters*, 462 U.S. 151 (1983), the Court decided that, because of the need to resolve disputes involving collective bargaining agreements in order to maintain labor peace, a short limitations period was required to allow the bargaining parties to be certain that their resolutions of such disputes were in fact final. Accordingly, it ruled that the time allowed for filing unfair labor practice charges under the NLRA — the six-month period of section 10(b) of the NLRA — would be borrowed for DFR suits. The Court emphasized, however, that the borrowing of state limitations period was to remain the norm, for labor as well as other federal claims.

This general rule, and not the narrow exception, applies to LMRDA claims. To be sure, any labor law claim could be said to have some connection to bargaining disputes. But if the result in *DelCostello* is to remain an exception rather than become the rule, the application of section 10(b) must be confined to claims which carry the same direct and immediate threat to the finality of bargaining compromises that DFR claims do. With very few exceptions, however, LMRDA claims do not threaten that finality. Indeed, they are fundamentally unlike DFR claims, which are based on workers' economic rights as employees and as members of a bargaining unit represented by a union, whereas LMRDA claims are founded on members' civil rights and political liberties as members

of the union. Moreover, the adoption of a short statute of limitations threatens the remedial objectives of the LMRDA, which depend entirely on the initiative of individual union members to find counsel and file suit to enforce the statute. Finally, given the tenuous connection between LMRDA claims and bargaining compromises, there is no countervailing justification for endangering the ability of union members to protect their rights, comparable to the need for finality in DFR actions.

Amici do not have strong views on which state limitations period should be selected, because all of the reasonable alternatives adequately permit the enforcement of the LMRDA. However, *amici* discuss the choices that might be made and suggest that a three year statute be borrowed from the North Carolina code.

ARGUMENT

THE COURT BELOW ERRED BY APPLYING A SIX-MONTH STATUTE OF LIMITATIONS TO FREE SPEECH CASES UNDER THE LMRDA.

A. *DelCostello*: Its History, Its Rationale, and Its Progeny.

With some exceptions, federal statutes do not contain their own statutes of limitations; rather, they must be borrowed from other sources. This Court has repeatedly declared that, as a general rule, courts should apply the most closely analogous state statute of limitations. *Johnson v. Railway Express Agency*, 421 U.S. 454, 462 (1975); *Runyon v. McCrary*, 427 U.S. 160, 180 (1976). The determination of which state statute of limitations is to be borrowed frequently presents a difficult issue of characterization, because federal statutes

often create rights for which there is no exact state parallel. *See* Section C, *infra*. This Court has made clear, however, that mere difficulty of characterization is not a sufficient reason to abandon the effort. *DelCostello v. Teamsters*, 462 U.S. 151, 171 (1983); *Wilson v. Garcia*, 471 U.S. 261 (1985).

There is a narrow exception to the general rule, however, for cases in which the use of analogous state statutes would frustrate the implementation of national policies. *Occidental Life Ins. Co. v. EEOC*, 432 U.S. 355, 367 (1977). As the Court held in *DelCostello*, the "hybrid" action against a union and an employer is one example. In order to place in context the reasons why this Court found it necessary to make an exception in that type of case, it is important to explain the precise role which "hybrid" actions play in federal labor law, and then to examine how they differ from LMRDA free speech cases such as this.[1]

Individual employees, as well as their unions, may sue under section 301 of the Labor-Management Relations Act ("LMRA"), 29 U.S.C. § 185, to enforce rights conferred on them by collective bargaining agreements between their employers and their unions. *Smith v. Evening News Ass'n*, 371 U.S. 195, 200 (1962). But the Court has erected a significant procedural barrier to prevent the courts from being inundated with suits to enforce collective bargaining agreements — the plaintiff must exhaust contractual grievance procedures,

[1]Another exception is a civil action for violations of the RICO statute. *Agency Holding Corp. v. Malley-Duff & Assoc.*, 107 S. Ct. 2759 (1987). In *Malley-Duff*, the Court decided that, given the extraordinary variety of types of RICO claims, and the amount of time expended on litigation of the proper limitations period for each, it was necessary to establish a single period to govern all RICO claims. *id.* at 2763-2764. The Court decided that the four-year limitations period for antitrust claims not only provided a uniform rule, but provided a close analogy with RICO claims. *Id.* at 2764-2765.

including arbitration, before suit is filed. *Republic Steel v. Maddox*, 379 U.S. 650 (1965). It has also erected a major substantive barrier to such suits — the courts will not overturn arbitral awards unless the award cannot possibly be justified as having drawn its essence from the collective bargaining agreement. *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

But the Court has recognized that employees may be prevented from exhausting the contractual procedures, or may be unable to obtain a fair hearing in arbitration, if the union breaches its DFR either in deciding not to complete the contractual procedures or in the manner of conducting them. Accordingly, the Court has ruled that individual employees seeking to enforce their rights under a collective bargaining agreement will be excused from the exhaustion requirement, and from the highly deferential standard of review under *Enterprise Wheel*, if, but only if, they can show that the union breached its DFR in handling the grievance. *Vaca v. Sipes*, 386 U.S. 171 (1967); *Hines v. Anchor Motor Freight*, 424 U.S. 554 (1976). A lawsuit in which employees seek to enforce both the collective bargaining agreement against the employer, and the DFR against the union, is known as a "hybrid" action.

The issue of the proper limitation period for hybrid actions first reached the Court in *UPS v. Mitchell*, 451 U.S. 56 (1981). In *Mitchell*, the narrow question on which certiorari had been granted was which state statute was the most analogous for post-arbitration hybrid suits against employers alone, and the Court decided that the most analogous statute was that for suits to vacate arbitration awards. *Id.* at 61-62. Moreover, the Court expressed concern that, absent a fairly short limitations period, the parties to the collective bargaining agreement could not be sure that an arbitrator's resolution of a dispute under the agreement was in fact final. Thus, although

state limitations periods for enforcing contractual rights provided another analogous alternative, those statutes allowed too long a period in which the arbitrator's disposition of a grievance was in question, and their use would frustrate federal policy favoring prompt resolution of labor-management disputes. *Id.* at 63-64.

Two years later, in *DelCostello*, the question presented was whether to apply a federal limitations period instead of any of the state alternatives in hybrid suits against both an employer and a union. The Court reiterated its concern that several of the analogous state limitations periods, such as actions for tortious injury or for professional malpractice, were so lengthy that employer-union disputes, and the compromises by which they were resolved (including negotiated terms, settled grievances, or even arbitral adjudications), could remain in limbo for years, and thus could endanger stability in labor relations and, in the long run, labor peace. 462 U.S. at 168-169. The other most analogous state statutes, such as those applied to actions to vacate arbitration awards, were so short — generally three months — that they did not give enough time for aggrieved employees to initiate suit. *Id.* at 165-168. Moreover, the Court recognized that the most analogous state statutes were different for the employer and for the union, and if each were applied to their respective defendant, the result would be the application of different limitations periods to two parts of the same suit, which would clearly have been undesirable. *Id.* at 169 n.19.

Still, the Court said, "these objections to the resort to state law might have to be tolerated if state law were the only source reasonably available for borrowing, as it often is." *Id.* at 169. However, it found that section 10(b) of the NLRA, 29 U.S.C. § 160(b), was more appropriate than any of the state analogies, both because it had been designed by Congress to accommodate a "very similar balance of interests," *i.e.*, employee rights versus the stability of private adjustment of labor disputes, and because the DFR was itself a cause of action implied from the NLRA. *Id.* at 169-171.

The Court was careful, however, to emphasize that the courts should not too readily decline to adopt state limitation periods simply because state law fails to provide a perfect analogy: "We stress that our holding today should not be taken as a departure from prior practice in borrowing limitations periods for federal causes of action, *in labor law or elsewhere*. . . . [R]esort to state law remains the norm for borrowing of limitations periods [unless] a rule from elsewhere in federal law *clearly* provides a closer analogy than available state statutes, and . . . the federal policies at stake and the practicalities of litigation make the rule a *significantly more appropriate* vehicle." *Id.* at 171-172 (emphasis added).[2]

Amici recognize that there are other labor law suits which, although not addressed by the Court in *DelCostello*, present such closely analogous situations that it may be appropriate to borrow the six-month period of section 10(b) instead of an analogous period from state law. Thus, for example, although *DelCostello* involved hybrid actions against unions and employers covered by the NLRA and LMRA, hybrid actions against unions and employers covered by the Railway Labor Act ("RLA") are so similar that the *DelCostello* reasoning would presumably apply to require the borrowing of a federal limitations period in such cases as well.[3]

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[2]Last Term, in *West v. Conrail*, 107 S. Ct. 1538 (1987), the Court cautioned against an overly mechanical reading of *DelCostello* to cut back as far as possible the time for initiating lawsuits, even for hybrid claims.

[3]We note that the Railway Labor Act contains an express two-year statute of limitations for suits to vacate arbitration decisions, 45 U.S.C. § 153, First (r), not a six-month period as in section 10(b) of the NLRA.

(footnote continued)

On the other hand, the courts of appeals that have considered the proper limitations period under section 303 of the LMRA, 29 U.S.C. § 187, in actions to enforce the secondary boycott provisions of the NLRA have opted not to apply the six-month period of section 10(b). *Monarch Long Beach Corp. v. Teamsters Local 812*, 762 F.2d 228, 231 (2d Cir. 1985); *Carruthers Ready-Mix v. Cement Masons Local 520*, 779 F.2d 320 (6th Cir. 1985); *Prater v. UMW*, 793 F.2d 1201, 1209-1210 (11th Cir. 1986). These courts applied longer limitations periods even though labor-management relations are directly affected by such suits and even though a secondary boycott, like a breach of the DFR, is an unfair labor practice for which Congress expressly prescribed a six-month limitations period for filing charges with the NLRB. Nevertheless, although the case for borrowing section 10(b) is far more compelling for cases under section 303, these courts concluded that the effect of such litigation on stable labor-management relations, and consequently on labor peace, is insufficient to warrant a departure from the normal rule of borrowing analogous state limitations periods.

Similarly, the limitations periods in employment discrimination cases have been borrowed from state law, *Johnson v. Railway Express Agency*, 421 U.S. 454, 462 (1975), despite the fact that such actions frequently call into question matters which had been settled between unions and employers. *Id.*; *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974) (Title VII case). The lower courts have continued to apply state limitations periods in such suits under 42 U.S.C. § 1981, even against unionized employers, citing the general rule

Nevertheless, every court that has ruled on the statute of limitations in hybrid actions under the RLA has chosen the NLRA's six-month limitations period. *E.g., Dozier v. TWA*, 760 F.2d 849, 851 (7th Cir. 1985). The question remains open in this Court. *West v. Conrail*, 107 S. Ct. 1538, 1541 n.2 (1987).

discussed in *DelCostello* as authority. *E.g., Howard v. Roadway Express*, 726 F.2d 1529, 1531 (11th Cir. 1984). *See also Goodman v. Lukens Steel Co.*, 107 S. Ct 2617, 2621 (1987).[4]

The question to be decided in this case, then, is whether the effect of LMRDA free speech litigation on stable labor-management relations is more like that of a hybrid action, or more like the many kinds of statutory labor causes of action held not to fall within the *Del Costello* exception. In making that determination, the Court should take as its point of departure its admonition in *DelCostello* that borrowing from state law remains the rule and not the exception, in labor law as elsewhere. 462 U.S. at 171-172. We suggest, indeed, that the Second Circuit, in a secondary boycott case, identified the correct standard for deciding whether a court should decline to borrow state statutes of limitations for a particular labor law claim: section 10(b) should apply only to suits which "inevitably involve an immediate and direct impact on labor-management relations." *Monarch Long Beach Corp. v. Teamsters Local 812, supra*, 762 F.2d at 231. This test, which is firmly rooted in the rationale of *DelCostello*, assures that the normal rule will be altered only in truly unusual situations. As we now show, no such departure is warranted for free speech cases under the LMRDA.

[4]The courts are divided over the question whether actions by unions against employers, or vice-versa, to enforce collective bargaining agreements, are governed by section 10(b) or by state limitations periods. *Compare Elevator Constructors v. Home Elevator Co.*, 798 F.2d 222, 227-229 (7th Cir. 1986) (borrowing state statute), *with Federation of Westinghouse Unions v. Westinghouse Elec. Corp.*, 736 F.2d 896, 901-902 (3d Cir. 1984) (applying section 10(b)). *See also Adams v. Gould*, 739 F.2d 858, 866-867 (3d Cir. 1984) (borrowing state statute for member's suit to enforce collectively-bargained pension rights). Whatever the proper rule in those cases, they obviously have a far more direct impact on labor-management relations than do suits under the LMRDA to enforce union members' civil liberties.

B. The *DelCostello* Rationale for Borrowing a Six-Month Period for Hybrid DFR Suits Does Not Apply To LMRDA Claims.

In order to understand the differences between hybrid DFR actions and suits under the LMRDA, it is first necessary to review the objectives that Congress sought to accomplish by enacting the LMRDA. The LMRDA, and particularly Title I of the Act, was the product of hearings conducted in the late 1950's by the Senate Select Committee on Improper Activities in the Labor-Management Field, chaired by Senator McClellan. S. Rep. No. 187, 85th Cong., 1st Sess. 2 (1959). The McClellan Committee investigations revealed many different ways in which corrupt union leaders had dominated unions and remained unaccountable to their members. The Committee focused specifically on the problem of international union officers who "circumvent freedom of speech on the part of [a] local" by punishing local officers. *E.g.*, 2 NLRB, *Legislative History of the LMRDA* 1105 (1959) (Senator Mundt, citing the McClellan Committee Hearings).

Thus, Title I has been construed to effectuate its purpose of guaranteeing "the independence of the membership and the effective and fair operation of the union as the representative of its membership." *Hall v. Cole*, 412 U.S. 1, 8 (1973). *See also Musicians v. Wittstein*, 379 U.S. 171, 182-183 (1964) (objective is to achieve "full and active membership participation in the affairs of the union"). As explained by then-Chief Judge Lumbard, the fundamental objective of the Act is to promote "the members' rights to determine the course of their organization." *Navarro v. Gannon*, 385 F.2d 512, 518 (2d Cir. 1967). The LMRDA's objectives are thus fundamentally different from those of the NLRA, which seeks to encourage the practice of collective bargaining and which in many respects subordinates the economic rights of individual employees in

order to achieve the collective good. *Emporium Capwell Co. v. Western Add'n Cmnty. Org.*, 420 U.S. 50 (1975); *Humphrey v. Moore*, 375 U.S. 335 (1964).

In light of these differences in objectives and functions between the LMRDA and the NLRA, LMRDA claims cannot properly be grouped with hybrid DFR actions for statute of limitations purposes, for two reasons which we more fully explain in the pages that follow. First, LMRDA claims are far less likely than hybrid suits, or, indeed, than most other kinds of labor law suits, to pose a direct and immediate threat to the finality of labor-management compromises or to stable labor-management relations. Second, an unduly abbreviated limitations period will likely make it much more difficult to enforce the LMRDA, contrary to Congress' intent that the principles of union democracy and responsibility be furthered by an enforcement mechanism which depends solely on the initiative of individual union members.

1. LMRDA Claims Do Not Pose an Immediate or Direct Threat to Labor Peace or to Labor-Management Compromises.

There are numerous differences between hybrid DFR actions and the great majority of LMRDA actions, all of which militate against borrowing the statute of limitations in section 10(b) for LMRDA suits. *See generally Doty v. Sewall*, 784 F.2d 1, 3-4, 6-7 (1st Cir. 1986); *Rodonich v. Laborers Local 95*, 817 F.2d 967, 976-977 (2d Cir. 1987); *Bernard v. Teamsters Local 435*, 587 F. Supp. 524 (D. Colo. 1984); *Testa v. Gallagher*, 621 F. Supp. 476 (S.D.N.Y. 1985); *Agola v. Hagner*, 120 LRRM 3279 (E.D.N.Y. 1985); *Rector v. Elevator Constructors*, 625 F. Supp. 174 (D. Md. 1985); *Maguire v. McQueen*, 122 LRRM 2449 (S.D.N.Y. 1986). The principal goal of most hybrid suits is to protect an employee's economic

rights under a collective bargaining agreement, generally in the form of reinstatement, back pay, or improved seniority. The union is sued because the worker must show a violation of the DFR as a precondition to the right to enforce the contract against the employer, *Vaca v. Sipes*, 386 U.S. 171 (1967), and because the union may bear responsibility for a portion of the resulting economic loss. *Bowen v. Postal Service*, 459 U.S. 212 (1983).

LMRDA suits, by contrast, seek to vindicate a union member's civil liberties or other political rights within the union, just as an action under section 1983 against a public official seeks to redress a violation of the constitution's Bill of Rights. Furthermore, unlike the DFR, which is inferred from the NLRA itself, rights under the LMRDA were directly provided for, precisely because Congress was dissatisfied by the failure of the NLRA, even as amended by the LMRA, to regulate internal union affairs and thus to protect union members from undemocratic abuses by their leaders. *See generally* McAdams, *Power and Politics in Labor Legislation* (1964). *See also Boilermakers v. Hardeman*, 401 U.S. 233, 237-241 (1971); *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 194-195 (1967). And in *DelCostello*, the Court relied on the fact that the NLRA, which itself contains a six-month limitations period, is the source of a union's DFR in deciding to apply the six-month period to hybrid actions. 462 U.S. at 170.

Another important difference between LMRDA and hybrid DFR actions is that, although the latter inevitably involve attacks on decisions resolving disputes between labor and management, which undermine the finality of these agreements, LMRDA actions normally do not involve such matters. Rather, the usual question is whether discipline was imposed without due process or a member's free speech rights infringed, sections 101(a)(2) and (5), 29 U.S.C. § § 411(a)(2)

and (5), whether dues were improperly increased, section 101(a)(3), 29 U.S.C. § 411(a)(3), whether a class of members was improperly denied the right to vote at a meeting, section 101(a)(1), 29 U.S.C. § 411(a)(1), whether union members have the right to examine books and records, section 201(c), 29 U.S.C. § § 431(c), or whether a union officer has misspent union funds. Section 501, 29 U.S.C. § 501. Not only do these issues not involve labor peace or collective bargaining, but it has been uniformly held that employers are not even proper defendants in such actions. *E.g., Duncan v. Peninsula Shipbuilders Ass'n*, 394 F.2d 237, 239 (4th Cir. 1968). Thus, unlike DFR actions, most LMRDA suits have no direct impact on labor-management relations or on labor peace and stability.[5]

Some courts have stated that the outcome of LMRDA actions may affect labor-management relations in a way that is comparable to the outcome of a hybrid action, because the exercise of democratic rights of the LMRDA may lead to a change in union policy, whether by the election of new officers or otherwise. *Steelworkers Local 1397 v. Steelworkers*, 748 F.2d 180, 184 (3d Cir. 1984). But the fact that a union may change its policies does not mean that it has the right to overturn collective bargaining agreements or reopen grievances that have already been resolved with the employer. Indeed, Congress has decreed that local unions must hold elections at least every three years, 29 U.S.C. § 481(b), but that scarcely means that bargaining compromises made during one officer's term are destabilized by the possibility that the officer may be defeated in an election held during the term of the agreement. In sum, although LMRDA rights may indirectly affect the union's rela-

[5]Inasmuch as LMRDA suits cannot proceed against both employers and unions, the justification offered in *DelCostello* for resorting to federal law to find a single applicable limitations period, 462 U.S. at 169 n.19, also disappears.

tions with an employer, that effect is by no means comparable to the destabilizing effect of DFR actions, and a six-month statute of limitations is not needed to advance the policy underlying the NLRA of promoting stability in labor relations.

The court below borrowed the six-month limitations period because it feared that an internal union dispute "if allowed to fester," could "erode the confidence of union members in their leaders" or "distract union officials from their . . . representation of union members in their relations with employers." 828 F.2d at 1070. However, precisely these arguments were made to Congress in opposition to the Bill of Rights for Union Members (Title I), but Congress rejected them when it enacted the LMRDA. In essence, Congress decided that the risk of damage to a union's collective bargaining position was outweighed by the members' interest — and the public interest — in union democracy. *Navarro v. Gannon*, 385 F.2d 512, 518 (2d Cir. 1967).

As a theoretical matter, it is possible that the resolution of an LMRDA action might eventually have some indirect impact on the collective bargaining relationship between the defendant union and some employers. If, for instance, the LMRDA had prevented Jimmy Hoffa from imposing a trusteeship on an errant local when it refused to cooperate in one of his labor shakedowns of an employer, *see* 29 U.S.C. § 462, labor-management relations might have been affected. If a union cannot increase its dues because the membership does not want to pay for a larger strike fund, *see* 29 U.S.C. § 411(a)(3), perhaps the leadership will be more reluctant to call strikes. Or union officers may be more cautious in the way they use strike funds if they know that their expenditures can be called into question as excessive under a fiduciary duty theory. *See* 29 U.S.C. § 501. And if a union officer such as petitioner Reed cannot be subjected to discrimination because

he is considered by the union leadership to be a "company man," Jt. App. 28, ¶ 3(b), perhaps the result will be a less adversarial relationship with management. In this sense, *some* LMRDA actions may have *some* indirect impact on economic relations between unions and employers and on labor peace in *some* circumstances.

But in that sense, every labor case, including one involving racial discrimination under 42 U.S.C. § 1981, has such an impact. Yet in *DelCostello* the Court said that, in labor cases as elsewhere, the normal rule applies — *i.e.*, there is a strong presumption in favor of borrowing from state limitations periods instead of from federal law. 462 U.S. at 171-172. Thus, the mere existence of the Congressional policy favoring the rapid disposition of labor disputes, which is embodied in section 10(b), and which was a primary basis for applying that limitation period to DFR suits, does not require that section 10(b) be used in actions by union members under the LMRDA.

In another context, the lower courts have recognized the minimal impact which most intra-union disputes have on labor-management relations and on labor peace. Thus, until recently, most courts held that federal courts had no jurisdiction over suits to enforce a union constitution as a contract between labor organizations unless the dispute threatened industrial peace or had a "significant impact" on labor-management relations. *E.g.*, *Alexander v. Operating Engineers*, 624 F.2d 1235, 1238 (5th Cir. 1980). The courts have generally been reluctant to find that intra-union disputes in fact have such a significant impact; for example, in *Alexander*, the court found no significant impact even though the issue was whether a union should be liable in damages because its business agent allegedly executed a contract without the membership's approval. Although this Court has since held this distinction irrelevant to the enforcement of union constitutions, at least in cases

brought by local unions, *Plumbers Local 334 v. Plumbers*, 452 U.S. 615 (1981), the analysis in cases such as *Alexander* is plainly inconsistent with the assumption that all intra-union disputes about free speech rights must inevitably have such a direct and immediate effect on labor-management relations as to warrant borrowing the statute of limitations from section 10(b).

There is evidence in the LMRDA itself that suggests that Congress did not contemplate a short statute of limitations in private civil actions under the statute. Thus, in Title III, Congress established a presumption that, absent clear and convincing evidence to the contrary, a trusteeship was lawful if suit is filed within the first 18 months after the trusteeship is established. After 18 months, by contrast, there is an opposite presumption — *i.e.*, that the trusteeship was unlawful. 29 U.S.C § 464(c). Yet trusteeships are often imposed because of disputes between locals and internationals about bargaining matters, *e.g.*, *Roland v. Airline Employees*, 753 F.2d 1385 (7th Cir. 1985); 29 U.S.C. § 462 (proper purpose for trusteeships is to assure acceptance of contract "concessions" negotiated by national union). Moreover, litigation over the authority of a trustee, who takes over a local union and conducts its negotiations with employers, is far more likely than most Title I suits to affect relations between a union and the employers with which it bargains. *E.g.*, *Moody v. Longshoremen*, 112 LRRM 2340 (N.D. Ohio 1982); *cf. 1820 Central Park Avenue Restaurant Corp.*, 271 NLRB 378, 378 n.3 (1984) (suggesting that trusteeship might affect employer's duty to bargain). Inasmuch as Congress plainly intended suits under Title III of the LMRDA to be filed more than 18 months after trusteeships are imposed, it is highly unlikely that Congress intended a six-month limitation period for suits under Title I of the same Act.

Admittedly, there is a small class of LMRDA cases which may have a direct and immediate impact of the kind present in *DelCostello*. Typically, in such cases, an LMRDA claim is appended to a DFR suit as an alternate theory by which the plaintiffs urge the court to overturn a collective bargaining agreement on the ground that it was not properly ratified by the union membership. Most of the early post-*DelCostello* decisions which applied section 10(b) to an LMRDA claim involved that sort of contention. *See Adkins v. Electrical Workers*, 769 F.2d 330, 335 (6th Cir. 1985); *Vallone v. Teamsters Local 705*, 755 F.2d 520 (7th Cir. 1984); *Linder v. Berge*, 739 F.2d 686 (1st Cir. 1984). However, the possibility that occasional LMRDA claims might pose a direct and immediate threat to a labor-management compromise scarcely provides justification for applying a six-month limitations period to the remaining bulk of LMRDA suits which pose no such danger.[6]

Some courts have held that section 10(b)'s limitation period should be applied to LMRDA cases because the NLRB has extended section 7 to protect the right of union members to engage in dissident activity, and so the LMRDA is said to have a "family resemblance" to unfair labor practices and to the DFR. *E.g.*, *Steelworkers Local 1397*, 748 F.2d at 183, *citing Steelworkers Local 1397*, 240 NLRB 848, 849 (1979); *Reed v. UTU*, 828 F.2d at 1070. This argument is incorrect for two reasons. First, under *DelCostello*, the only "resemblance"

[6]We doubt that such LMRDA claims will frequently be brought more than six months after the alleged wrongful act, both because the courts are reluctant to award damages in such cases, *Acri v. Machinists*, 781 F.2d 1393 (9th Cir. 1986), and because the only useful injunctive relief at that point would have to apply to the employer, who cannot be held liable under the LMRDA. Thus, effective relief can only be obtained before the contract has been implemented. *E.g.*, *Bauman v. Presser*, 117 LRRM 2393 (D.D.C. 1984). *See generally* Levy, *Membership Rights in Union Referenda to Ratify Collective Bargaining Agreements*, 4 Hofstra Lab. L.J. 225, 258-265 (1987).

that warrants adoption of the extraordinarily short six-month period would be a similarity in effect on national labor policy; yet, as we have shown above, the connection between most LMRDA actions and the consensual process of bargaining and grievance adjustment is at most indirect. Second, unlike the DFR, which is almost by definition an unfair labor practice, most LMRDA actions find no parallel in the NLRA. Thus, in *Steelworkers*, as in almost all NLRB cases where a union was found to have committed an unfair labor practice by punishing a dissident, the unlawful activity of the union related to employment rights, such as threatening to refuse to process a dissident's grievances and asking the employer to discharge a dissident. *Steelworkers Local 1397*, 240 NLRB 848, 849 (1979), *and cases cited*. *See also Teamsters Local 745*, 240 NLRB 537 (1979) (threat of violent retaliation).[7]

Admittedly, if a union officer assaults a member or causes him to be discharged or otherwise mistreated by the employer in retaliation for the exercise of Title I rights, that violates section 101(a)(2) of the LMRDA, *e.g.*, *Shimman v. Frank*, 625 F.2d 80, 90-91 (6th Cir. 1980); *Murphy v. Operating Engineers Local 18*, 774 F.2d 114, 123 (6th Cir. 1985), as well as section 8(b)(1)(A) of the NLRA. However, not only do such cases represent a minute portion of the cases that may be filed under Title I, but it is precisely because Congress was dissatisfied with the extent of protection afforded union dissenters by the NLRA that it enacted Title I of the LMRDA and gave union members the right to go to court over their mistreatment at the hands of union leaders. In those

[7]In some cases, the Board found a violation of the NLRA when unions fined workers for being dissidents. *E.g.*, *Carpenters Local 22*, 195 NLRB 1 (1972). More recently, the Board has recognized a congressional policy "not to interfere with the internal affairs of unions, aside from regulations affecting employment status." *East Texas Motor Freight*, 262 NLRB 868, 870 (1982).

circumstances, even if the NLRB has now expanded its own doctrines to address some of the problems that it had neglected in 1959, it would be odd indeed to start borrowing limiting principles from the very statute that Congress deemed inadequate, in order to reduce the impact of the LMRDA on union interests. *Wilson v. Garcia*, 471 U.S. 261, 279 (1985) (Court declines to borrow limitations period for state remedies for wrongs by public officials, because "[i]t was the very ineffectiveness of state remedies that led Congress to enact the . . . Act in the first place").

In summary then, the vast majority of LMRDA claims in general, and Reed's claims in particular, do not pose a direct or immediate threat to labor-management compromises or to labor peace, and hence application of the six-month limitations period of section 10(b) is unwarranted.

2. A Six-Month Limitations Period Threatens the Enforcement of the Union Democracy Provisions of the LMRDA.

Although delay in the filing of LMRDA suits does not pose a threat to stable labor-management relations, a statute of limitations as abbreviated as six months does pose a significant threat to union members' access to judicial protection. This Court recognized the problem in *DelCostello*, where it discussed the difficulty that members have in deciding whether their rights have been violated, in finding counsel in a field in which almost all of the specialists represent either unions or employers, in finding money to pay the lawyer, and in performing all of the investigative and other prerequisites to suing. 462 U.S. at 166. It was also considerations of this kind that led the Court, in *Burnett v. Grattan*, 468 U.S. 42 (1984), to decline to borrow a *state* six-month limitation period applicable to state administrative discrimination claims, to determine the

time for filing a complaint under 42 U.S.C. § 1981 in federal court. *Id.* at 49-52.

There are other elements of LMRDA cases that make a short statute of limitations inappropriate. For instance, in a hybrid action, a worker who has already been discharged may have nothing to lose and much to gain by filing suit against his union and his employer. By contrast, an employee who believes that his LMRDA rights have been violated by his union, but who has not lost his job, may have good reason to think twice before going to court over an abstract principle of justice and democracy, or to recover a few dollars in unlawfully collected or misspent union dues. If he decides to go to court, he must sue a labor official who controls hiring hall referrals, decides whether or not to process grievances, and constantly trades away benefits of one group of members in order to obtain benefits for others. Thus, most workers are justifiably cautious about stepping forward to confront their leaders.

Moreover, in many LMRDA cases the individual plaintiff who prevails receives few tangible benefits, if any. Unlike a DFR case, in which the plaintiff's injury is primarily economic, and the principal relief sought is reinstatement and damages for the denial of employment opportunities, in an LMRDA case the member rarely has any significant economic interest at stake. Rather, the principal beneficiaries are the union membership as a whole and the public interest in honest and democratic unions. *Hall v. Cole*, 412 U.S. 1, 7-8 (1973). For example, Reed's case involves reimbursement of barely more that $1,000. In these circumstances, a statute of limitations that allows a very short time for deciding whether to undertake the risks of suing will inevitably have the effect of unduly limiting the enforcement of the Act. *Doty*, 784 F.2d at 9. And yet, unlike the DFR which can be enforced by the NLRB, the

LMRDA is enforced solely by suits filed by individual union members who have hired a lawyer to represent them. It is for these reasons, among others, that commentators as diverse as Archibald Cox, counsel to the draftsmen of the LMRDA, and Florian Bartosic, former general counsel of the Teamsters Union, have urged sensitivity to the difficulties which rank-and-file union members will have in serving as the sole means of enforcement of the Act. Cox, *Internal Affairs of Labor Unions Under the Labor Reform Act of 1959*, 58 Mich. L. Rev. 819, 853 (1960); Bartosic, *Union Fiduciaries, Attorneys, and Conflicts of Interest*, 15 U.C. Davis. L. Rev. 227, 359-360 (1982).[8]

Accordingly, because applying a limitations period as short as six months would imperil Congress' objectives in passing the LMRDA, in ways which a similar limitations period does not undermine enforcement of the DFR, the Court should not adopt the six-month period in section 10(b) for LMRDA actions, even if the other concerns that motivated the Court in *DelCostello* to borrow it for hybrid actions were applicable.

C. The Proper State Limitations Period.

Amici's principal objective in this case is to persuade the Court not to extend the *DelCostello* exception to Title I of the LMRDA. *Amici* do not have strong views about which state limitations period should be borrowed, in this case or elsewhere, because a limitations period of two, three, or four

[8]By contrast, Congress has provided that union elections may be challenged by the Secretary of Labor, and a short statute of limitations is provided for such cases. 29 U.S.C. § 482.

years will suffice to protect Congress' objective of establishing effective democratic rights for union members.[9]

We recognize that the Court has recently moved in the direction of adopting uniform limitation periods for broad classes of suits, in order to reduce the burdens imposed on the courts and the parties by litigation over the proper limitation periods for fact-specific claims. *Wilson v. Garcia*, 471 U.S. 261 (1985) (42 U.S.C. § 1983); *Agency Holding Corp. v. Malley-Duff & Assoc.*, 107 S. Ct. 2759 (1987) (RICO). Title I has not produced nearly the outpouring of litigation spawned by section 1983 or by RICO, and thus might present a less compelling case for a uniform limitations period, perhaps because many of its claims seek injunctive relief for which laches may be the applicable doctrine. On the other hand, there are clear benefits to be gained from a predictable statute of limitations period for all potential Title I claims, so that the parties can have some certainty in advance when a specific claim, whose limitations period has not been litigated, will become untimely.

If the Court does opt for a uniform limitations period for all Title I claims, North Carolina's three-year limitations period for personal injury limitations, N.C. Gen. Stat. § 152(16), seems to be the most closely analogous. It is true that Title I claims may relate to what may seem to be a variety of subjects, including economic issues such as blacklisting of dissidents, monetary issues such as disciplinary fines and dues levels, and political issues such as the right to speak at union

[9]However the Court rules on limitations periods for Title I claims, it should not try to fix a uniform limitations period for claims under other titles of the LMRDA. There are provisions for private civil actions under several of the other titles which may raise different considerations from those raised by Title I suits. *E.g.*, section 201(c), 29 U.S.C. § 431(c) (right to inspect union records); section 501, 29 U.S.C. § 501 (fiduciary duties of union officers). *See Erkins v. Bryan*, 785 F.2d 1538, 1543 (11th Cir. 1986).

meetings or to vote on bylaws amendments. Despite these apparent differences, the one thing which all Title I cases have in common is that individual members' civil rights or civil liberties, conferred by the "Bill of Rights of Members of Labor Organizations," have been infringed. Indeed, the rationale for enacting this congressional charter for union democracy was that Congress had given unions certain powers over their members, and thus it was fair to subject unions to some of the same kind of restraints that confine the power of public authorities. In this sense, Title I provides a cause of action for union members to enforce certain constitutional rights against their unions, much as section 1983 provides a cause of action whereby persons may enforce their constitutional rights against improper state action. Thus, for the same reasons that the Court has borrowed the state limitations period for personal injuries for civil rights actions under sections 1983 and 1981, *Wilson v. Garcia*, 471 U.S. 261 (1985); *Goodman v. Lukens Steel Co.*, 107 S. Ct. 2617, 2620-2622 (1987), it would be appropriate here to borrow the North Carolina statute of limitations for personal injury claims.

If, on the other hand, the Court does not determine to adopt a uniform limitations period for all Title I claims, then three possibilities present themselves here. The Court might borrow the state limitations period for personal injury claims, on the theory that the fundamental issue in this case is whether the union was trying to suppress petitioner's personal rights. N.C. Gen. Stat. § 1-52(16). Or it might borrow the state's catch-all statute of limitations for rights conferred by statute, because petitioner seeks to enforce rights contained in a federal statute for which North Carolina has not specified a limitations period. N.C. Gen. Stat. § 1-52(2). Or, insofar as petitioner seeks to obtain payment for work done for the union that would have been paid pursuant to the union's normal practice, ab-

sent the union's improper motive, the Court could conclude that the state limitations periods for quantum meruit or contract actions is the most closely analogous. N.C. Gen. Stat. § 1-52(1). In this case the result would be the same under any of these alternatives, because the North Carolina statute of limitations for all of these causes of action is three years, but that is unlikely to be true in every state.

But whether the Court opts for a broad uniform limitations period, or for a more claim-specific approach, there are a number of acceptable analogies to state law causes of action that serve the Congressional objective of effective, enforceable union democracy rights, and that do not injure the national labor policy favoring expeditious resolution of contract disputes between unions and employers. Accordingly, there is no need to borrow the extraordinarily short six-month period contained in section 10(b) of the NLRA.

CONCLUSION

The judgment of the court of appeals should be reversed.

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